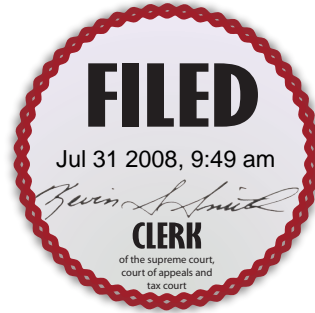


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL MASSIE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0801-CR-11
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Carol Orbison, Judge  
The Honorable Amy Barbar, Magistrate  
Cause No. 49G22-0707-FC-150638

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**July 31, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Michael Massie appeals his placement with the Department of Correction to serve his six-year sentence, raising the following restated issue: whether his sentence is appropriate where he pled guilty and where he was accepted for placement by Community Corrections in the work release program.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

While visiting the home of his then girlfriend, D.S., Massie became angry and D.S. asked him to leave. Massie struck D.S. in the face, rendering her unconscious. When she regained consciousness, Massie told her that she needed to go to a hospital and that he did not mean to do it. He left without helping her obtain medical treatment. D.S.'s eyes were so swollen that she could not seek medical attention until the next morning. She sustained serious injuries, including blackening of the eyes, fractures to her nose and orbital area, and bruising and swelling. D.S. spent three days in the hospital. At the time of the offense, Massie was on probation for a previous conviction also involving D.S. as the victim.

The State charged Massie with battery<sup>1</sup> as a Class C felony, criminal confinement<sup>2</sup> as a Class D felony, and domestic battery<sup>3</sup> as both a Class D felony and a Class A misdemeanor. The State and Massie entered into a plea agreement providing that Massie would plead guilty to Class C felony battery and the State would dismiss the remaining charges. The plea

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<sup>1</sup> See IC 35-42-2-1(a)(3).

<sup>2</sup> See IC 35-42-3-3.

<sup>3</sup> See IC 35-42-2-1.3(a).

agreement also included a cap of six years on the initial executed time and required Massie to admit to a probation violation. Massie pled guilty to the battery charge and the probation violation, and the trial court revoked his probation. The trial court accepted Massie's plea.

During his sentencing hearing, the trial court found one mitigating factor, that Massie accepted responsibility by pleading guilty, but also found aggravating factors, that Massie committed the present offense while on probation for victimizing the same person, that he had been given a previous opportunity to seek substance abuse treatment but refused that treatment, and that he had a prior criminal history. Massie requested placement with Community Corrections and noted that Community Corrections had recommended him for the work release program; the trial court, however, found that he was "absolutely not appropriate for Community Corrections." and sentenced him to the Department of Correction to serve the remaining 327 days from his previous sentence for the probation violation and to a consecutive eight years imprisonment, with two years suspended to probation for the instant offense. *Tr.* at 32. Massie now appeals.

### **DISCUSSION AND DECISION**

Massie does not appeal the length of his sentence, but instead argues that placement with Community Corrections would be more appropriate for his sentence and petitions this court to revise his sentence accordingly. *Appellant's Br.* at 7, 8.

The Indiana Constitution allows appellate courts to conduct an independent review and to revise a defendant's sentence. Ind. Const. art. VII, §§ 4, 6. This court may revise a sentence authorized by statute, if the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The

place a sentence is to be served is an appropriate focus for appellate review. *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). Massie bears the burden to establish that his placement in the Department of Corrections is inappropriate. *Fonner v. State*, 876 N.E.2d 340,344 (Ind. Ct. App. 2007).

To determine whether Massie's placement is inappropriate, this court will examine both the nature of the offense and Massie's character. *Storey v. State*, 875 N.E.2d 243, 252-53 (Ind. Ct. App. 2007). As to the nature of the offense, this offense involved the brutal beating of a woman. *Tr.* at 13-14. D.S. suffered serious injuries including fractures to the nose and orbital areas, bruising and swelling of the forehead, and blackening of the eyes, which required hospitalization. *Id.* Additionally, Massie was on probation at the time of the attack for a previous violent incident involving the same victim. *Id.* at 14, 33.

The character of the offender is demonstrated by Massie's extensive juvenile and criminal history, including convictions or adjudications for criminal deviate conduct, fleeing law enforcement, escape, cocaine possession, and an attempted robbery where Massie shot the victim. He has also received several reprimands while in prison. Massie has violated terms of probation numerous times. At the time of the instant offense Massie was on probation for attacking the same victim. Massie has previously served time in the Department of Correction and completed substance abuse programs, but has continued to commit criminal acts.

Massie asserts that Community Corrections is a more appropriate placement, and the record does indicate that Community Corrections recommended him for the work release program. However, the trial court felt that Massie was "absolutely not appropriate for

Community Corrections.” *Tr.* at 32. The trial court determined that the brutality of the battery, Massie’s prior criminal history, especially his history of domestic violence,<sup>4</sup> and that the same victim from an earlier battery case was involved were the aggravating factors that outweighed the sole mitigating factor of accepting responsibility for his actions, and warranted his placement in the Department of Correction. Massie argues that he is able to work and could be a productive member of society with assistance, supervision, and training. However, in light of the frequency and nature of Massie’s prior behavior and the brutality of this crime, Massie has failed to show that his placement with the Department of Correction is inappropriate.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.

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<sup>4</sup> In addition to the present case, Massie committed an act of domestic violence against one other woman in 2006. *TR.* at 24-25.